Not all the causes of action in the instant case would expire six years from the date on which the right of action accrued. In respect of the claims of fraud and fraudulent breaches of trust no period of limitation as prescribed by the Limitation Act, (Cap. 10) would apply: see section 22(1) of the Act. Even with regard to the plaintiffs' claims of negligence and the tort of conspiracy, I was not altogether satisfied that the period of limitation of six years had expired on July 1, 1985. I did not have, for example, the allegations as to when the breach of duty had taken place nor the date when the conspiracy was agreed. Although the plaintiffs or their lawyers had failed to take out the summons for directions over a lapse of four years and two months, the third defendants did not do so, although they could have done so. After the plaintiffs had served the notice of their intention to proceed in May 1985 there was not a whiff of any objection from the third defendants who apparently waited for the period of limitation to expire, or so they thought, before they applied to dismiss the action for want of prosecution. Seeing that not all the causes of action pleaded in this case had expired; that such of the causes of action which had expired (if they did, as to which I had some doubt) only on the day before the application to dismiss the action; and that some two months earlier the plaintiffs had given notice of their intention to proceed which they did by filing the summons for directions, I thought in the exercise of my discretion that a dismissal would be too draconian.

I had a second reason for not dismissing the action. I was not persuaded that the delay, though flagrant and inordinate, would give rise to a substantial risk that it would not be possible to have a fair trial of the issues in the action. Nor was I persuaded that such delay was likely to cause or had caused serious prejudice to the third defendants. The issues in this case are quite clear from my earlier references to and analysis of the pleadings. In fact, the plaintiffs' evidence would probably be dependent on oral testimonies; whereas those of the third defendants would largely be documentary or would have been documented. Contrary to the bald affidavit assertions made on behalf of the third defendants, I could not see how the defences of the third defendants would materially depend on the oral testimonies of the officers of the insured, the first defendants, or the evidence of the second defendants. At any rate it was somewhat speculative to say that these witnesses might not be available, if they had to be called. Further, it was alleged on behalf of the third defendants that they had a right of contribution or indemnity from the first defendants which were wound up if the plaintiffs were to succeed, which they lost by reason of the delay of the plaintiffs. I was of the view that whatever that right was, the third defendants had ample time since the commencement of the action and could have taken out third party proceedings against the first defendants. If the third defendants had failed to do so within the period of limitation, the direct and effective cause of the loss was the third defendants' failure to take out such third party proceedings and the loss could not be laid at the doorsteps of the plaintiffs.

Counsel for the third defendants relied on *Toh Hock Thye & Ors.* v. *Toh Chwee Biow*,[4] a decision of the Federal Court of Malaysia which affirmed the principles of law governing a dismissal of an action for want of prosecution enunciated by a differently constituted Federal Court of Malaysia in the earlier case of *Vasudevan* v. *Damodaran*.[5] The law was clearly and succinctly spelt out in the two cases: see in particular the judgment of Abdoolcader J. (as he then was) who delivered the judgment of the Federal Court in the latter case at pp. 150, 151. The Federal Court of Malaysia received into Malaysia the principles set out by Lord Diplock in *Birkett* v. *James* and applied the principles to the facts of the two cases and such applications are instructive examples for the guidance of our courts. In the instant case, I did the same thing and applied the principles to the particular facts of this case.

Order accordingly.

Solicitors: *Lim, Ganesh & Liu; Lee & Partners.*

THE STRAITS TIME PRESS (1975) LTD. v. THE WORKERS' PARTY & ANOR.

[O.C.J. (Thean J.) April 24, 1986]

[Singapore – Suit No. 745 of 1982]

Defamation – Libel – Press release made by first defendant signed by second defendant – Whether words complained in press release were defamatory in their natural and ordinary meaning – Fair comment – Defendants bearing part of costs.

In this case, the plaintiffs, proprietors and publishers of "*The Straits Times*", brought an action for defamation against the first defendant, a political party and the second defendant, J.B. Jeyaretnam, who was and is the Secretary-General of the first defendant.

The action arose out of the speech made by Mr. S. Rajaratnam the second Deputy Prime Minister, at a dinner function in Singapore and *The Straits Times* carried the report of the speech. The report said among other things: "Mr. Rajaratnam said one WP candidate in the last general elections was later discovered to be a bicycle thief." The defendant was incensed at this report and immediately called a press conference on January 18, 1982. The second defendant threatened to take legal action for defamation against the plaintiffs if they failed to publish an apology in the form of and on the terms then demanded. Accordingly, on the following day, the plaintiffs caused a correction and an apology to be published in *The Straits Times*. On the same day the first defendant issued a press release signed by the second defendant in the following terms: "The Workers' Party notes that the Second Deputy Prime Minister Mr. S. Rajaratnam has failed to respond to the challenge by the Party and has sought refuge behind the *Straits Times* who has attempted to go to his rescue by a statement that he was reported incorrectly. The Party is now proceeding to commence proceedings against both Mr. S. Rajaratnam and *The Straits Times* for defamation."

The plaintiffs took exception to this press release and eventually took out a writ against the defendants claiming damages and libel contained in the press release. Two issues arose in the action namely (a) whether the words complained of in their natural and ordinary meaning have the meanings attributed to them by the plaintiffs and are defamatory of the plaintiffs and (b) whether the words complained of are fair comment on a matter of public interest.

Held: (1) the words complained of in their natural and ordinary meaning were not defamatory of the plaintiffs and the plaintiffs' claim therefore failed and the action should be dismissed;

(2) the defendant's defence, that the words complained of were fair and made without malice on the matter of public interest, failed. The words complained of were clearly not comment but a statement of fact, nor were they comment based on any fact at all.;

(3) the plaintiffs should pay the defendants only two-third of the costs of this action. Only one set of the costs is allowed to the defendants.

Cases referred to:

(1) *Rubber Improvement Ltd.* v. *Daily Telegraph Ltd.* [1964] A.C. 234, 258.
(2) *Jones* v. *Skelton* [1963] 3 All E.R. 952, 958.
(3) *The Capital And Counties Bank, Ltd.* v. *George Henty & Sons* (1882) 7 App. Cas. 741. 745.
(4) *Nevill* v. *Fine Art And General Insurance Company* [1897] A.C. 68, 73.
(5) *Australian Newspaper Co. Ltd.* v. *Bennett* [1894] A.C. 284, 287-288.
(6) *J.B. Jeyaretnam* v. *Goh Chok Tong* [1985] 1 M.L.J. 334, 338.

CIVIL SUIT.

A.P. Godwin (*Dora Y.S. Cheok* (Miss) with him) for the plaintiffs.

J.B. Jeyaretnam for the first defendant.
Subhas Anandan for the second defendant.

Cur. Adv. Vult.

Thean J. : The plaintiffs are proprietors and publishers of the English language daily newspaper known as "*The Straits Times*." The 1st defendant is a political party registered under the Societies Act (Cap. 262) and the 2nd defendant was at all material times, and still is, the Secretary-General of the 1st defendant.

On January 16, 1982, *The Straits Times* carried a report of a speech made by Mr. S. Rajaratnam, then Second Deputy Prime Minister, on the previous evening at a dinner at the Great Eastern Hotel organised by the district committee of the People's Action Party. The report said, among other things: "Mr. Rajaratnam said one WP candidate in the last general election was later discovered to be a bicycle thief." The report was written jointly by Edmund Wee (P.W.1), a journalist of the plaintiffs, who was present at the dinner when Mr. Rajaratnam made the speech and who took down a note of the speech, and Ahmad bin Osman (P.W.2), another journalist of the plaintiffs. The defendants were incensed at this report and immediately called a press conference on January 18, 1982 at 3 p.m., at which were present two representatives of the plaintiffs, namely, Leslie Fong (P.W.3), the associate editor of the plaintiffs and P.W.2. The 2nd defendant then issued a challenge to Mr. Rajaratnam either to name the alleged bicycle thief, in which case he said that Mr. Rajaratnam would be sued by such candidate, or, if Mr. Rajaratnam did not name such a candidate, then the 1st defendant would sue him, in either case for defamation. The 2nd defendant further said that the challenge would serve as a notice to Mr. Rajaratnam and that Mr. Rajaratnam might reconsider the statement as reported and issue an apology. The 2nd defendant also threatened to take legal action for defamation against the plaintiffs if they failed to publish an apology in the form and on the terms then demanded.

Upon returning to the plaintiffs' office at Times House, P.W. 3 at once called a meeting at which he himself, P.W. 1, P.W. 2 and one Bob Ng, the executive editor of the plaintiffs, were present. The purpose of the meeting was of course to determine whether the plaintiffs had made an error in the report of Mr. Rajaratnam's speech. In the course of checking with P.W. 1 as to what Mr. Rajaratnam spoke, P.W. 3 called for the library file

and from there he found that the bicycle thief referred to by Mr. Rajaratnam was obviously Wu Ker, who stood as a candidate in a previous general election and not the last one as reported by P.W. 1. Enquiries were then made by P.W. 3 with reporters of the Chinese press and Singapore Broadcasting Corporation and also with Mr. Rajaratnam himself, after which all four of them unanimously came to the conclusion that an error in the reporting had been made and decided that the plaintiffs ought to publish a correction and an apology. Accordingly, on the following day, January 19, 1982, the plaintiffs caused a correction and an apology to be published in *The Straits Times* which is as follows:

"*Candidate stood in 1972 election*

Last Saturday, *The Straits Times* reported Mr. Rajaratnam as having said, in off-the-cuff remarks during a dinner speech on Friday, that one Workers' Party candidate in the last general election was later discovered to be a bicycle thief.

This is incorrect. The Second Deputy Prime Minister (Foreign Affairs) did not say that the man stood in the 1980 general election. He told *The Straits Times* last night that he was referring to a WP candidate who stood in 1972.

We apologise to all eight WP candidates who stood in the 1980 general election and to the party for the imputation contained in the report.

We also apologise to Mr. Rajaratnam for the inaccurate report."

On the same day, the 1st defendant issued a press release signed by the 2nd defendant ("the press release") which is as follows:

"*PRESS RELEASE*

The Workers' Party notes that the Second Deputy Prime Minister Mr. S. Rajaratnam has failed to respond to the challenge by the Party and has sought refuge behind the *Straits Times* who has attempted to go to his rescue by a statement that he was reported incorrectly.

The Party is now proceeding to commence proceedings against both Mr. S. Rajaratnam and the *Straits Times* for defamation.

Sgd: J. B. Jeyaretnam
(Secretary-General)"

The plaintiffs took exception to this press release and on January 22, 1982 their solicitors wrote to the 1st defendant and also to the 2nd defendant complaining that the statement contained in the press release was defamatory of the plaintiffs and demanded an apology. The defendants through their solicitors in reply denied that the press release was defamatory of the plaintiffs. In consequence, the plaintiffs, on February 23, 1982, took out a writ against the defendants claiming damages for libel contained in the press release. In their statement of claim the plaintiffs attributed two meanings to the words complained of and I quote below the two meanings as alleged in paragraph 7 thereof:

"In their natural and ordinary meaning, the said words meant and were understood to mean that the plaintiffs had attempted, by publishing in the issue of *The Straits Times* dated 19th January 1982 an item in the form hereunder particularised, with the intent and for the purpose of rescuing or protecting Mr. Rajaratnam from and in respect of the said challenge. In their natural and ordinary meaning, the said words also meant that the plaintiffs, in their said business, had knowingly published an item in *The Straits Times* which was untrue."

In their defence the defendants denied that the words bore the meanings as alleged or any meaning defamatory of the plaintiffs and further, in the alternative, averted that the words were fair comment upon a matter of public interest, namely, whether Mr. Rajaratnam did say the words attributed to him in the plaintiffs' publication of January 16, 1982. There are therefore two issues before me:

(a) Whether the words complained of in their natural and ordinary meaning have the meanings attributed to them by the plaintiffs and are defamatory of the plaintiffs, and

(b) Whether the words complained of are fair comment on a matter of public interest.

The plaintiffs are relying on the natural and ordinary meaning of the words and not on any particular innuendo therein. The natural and ordinary meaning is that which would be reasonably understood by ordinary persons using their general knowledge and common sense, and this includes any inference which can be reasonably drawn from the words: see the judgment of Lord Reid in *Rubber Improvement Ltd.* v. *Daily Telegraph Ltd.*[1] and the judgment of Lord Morris of Borth-y-Gest in *Jones* v. *Skelton.*[2]

The press release has two paragraphs and obviously it is the first paragraph which is the subject matter of the complaint. That paragraph consists of only one sentence and the initial part of the sentence ending with the words "*The Straits Times*" cannot, in my view, be said to be defamatory in any way of the plaintiffs. The complaint is centred on the ensuing words: "who [*The Straits*

Times] has attempted to go to his [Mr. Rajaratnam's] rescue by a statement that he was reported incorrectly." However, these words must be read in the context of the press release. It is the contention of the plaintiffs that read in that context the words convey the meaning that the plaintiffs published the correction and apology with the intent and for the purpose of rescuing and protecting Mr. Rajaratnam from the challenge made by the defendants and impute that the plaintiffs had corruptly, dishonestly and deliberately published a false correction. This contention I am unable to accept. To construe the words as having such a meaning and containing such an imputation would in effect be straining the language and drawing unsustainable inference therefrom. One must really read the press release as a whole and read as a whole the meaning seems to me to be clear: it was an attack on Mr. Rajaratnam and any adverse imputation therein was directed towards Mr. Rajaratnam, and not the plaintiffs.

The press release must also be viewed in the light of the circumstances in which it was published. Prior to its publication the plaintiffs had reported incorrectly part of the speech of Mr. Rajaratnam, and they subsequently published a correction and an apology. An ordinary person using his general knowledge and common sense on reading the press release would not have understood it to mean that the plaintiffs had corruptly, dishonestly and deliberately published the correction and apology to shield Mr. Rajaratnam. Taking a reasonable view of the situation, it is highly unlikely that such a person would come to this conclusion. As Lord Selborne L.C. said in *The Capital And Counties Bank, Limited* v. *George Henty & Sons*[3]:

"The test, according to the authorities, is, whether under the circumstances in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libellous sense."

It may be that some persons might have understood the words complained of as conveying an imputation of dishonest, corrupt or false publication by the plaintiffs in their newspaper, but that is not enough: see the judgment of Lord Halsbury L.C. in *Nevill* v. *Fine Art And General Insurance Company*.[4]

The plaintiffs seem to suggest that the sting is in the words that the plaintiffs had attempted to go to Mr. Rajaratnam's rescue and the inference from these words. It seems to me that reading the press release as a whole and considering it in the circumstances in which it was published an ordinary person would not reasonably infer from these words the grave and serious imputation contended by the plaintiffs; such a person would in all probability have regarded that the defendants had used these words extravagantly, as people do occasionally. In this connection, I find extremely apposite the following passage of the judgment of Lord Watson L.C. in *Australian Newspaper Company Limited* v. *Bennett*[5]:

"The judgment of the Court below was founded on the use of the word "Ananias." Windeyer, J., has expressed the opinion that only one meaning could be attributed to that word, that everyone must understand it to impute wilful and deliberate falsehood, and that therefore the mere use of the word "Ananias," which necessarily involves such an imputation, could not reasonably be held to be innocent, or to be otherwise than intended to cast this imputation upon the plaintiff. Even admitting that the natural effect of the use of the word "Ananias" standing alone would be to convey the imputation suggested, the learned judge appears to their Lordships, with all respect, to have lost sight of the fact that people not unfrequently use words, and are understood to use words, not in their natural sense, or as conveying the imputation which, in ordinary circumstances, and apart from their surroundings, they would convey, but extravagantly, and in a manner which would be understood by those who hear or read them as not conveying the grave imputation suggested by a mere consideration of the words themselves."

In my opinion, the words complained of in their natural and ordinary meaning are not defamatory of the plaintiffs, and the plaintiffs' claim therefore fails.

The defendants raised a further defence, namely: the words complained of are fair comment made without malice on a matter of public interest. This defence has no merit at all. I reiterate what I said in *J.B. Jeyaratnam* v. *Goh Chok Tong*[6]: to sustain such a defence the defendants must establish four requisite elements:

(i) the words complained of are comment though the comment may consist of or include inference of facts;

(ii) the comment is on a matter of public interest;

(iii) the comment is based on facts, and

(iv) the comment is one which a fair-minded person can honestly make on the facts proved.

See paragraph 12.02 of *Duncan & Neil* on defamation (2nd edn.). So far as this defence is concerned, it fails to satisfy these requirements; the words complained of are clearly not comment but a statement of fact; nor are they comment based on any fact at all. Therefore this defence fails.

I dismiss the action. On the question of costs, there are two matters which merit consideration and I have considered them. First, the defendants raised the defence of fair comment which has failed. Such a defence, in my view, should not have been raised at all; there is no basis for it. Secondly, counsel for the 1st defendant, who is himself the 2nd defendant, went at great length in cross-examining all the witnesses called by the plaintiffs on extraneous matters which have no bearing on the issue at all, thus prolonging the trial unnecessarily. The defendants therefore must bear part of the costs for such ill-advised moves. I accordingly order the plaintiffs to pay to the defendants only two-thirds of the costs of this action. Both the defendants are represented by the same firm of solicitors, though at the hearing they were represented by separate counsel; but counsel for the 1st defendant is the 2nd defendant himself, and in effect assumed the role of leading counsel in the defence. In the circumstances, I allow only one set of costs to the defendants.

Claim dismissed.

Solicitors: *Godwin & Co.; J.B. Jeyaretnam & Co.; M.P.D. Nair & Co.*

CORONATION ELECTRONICS LTD. v. LALCHAND MAHTANI

[A.C.J. (Chan Sek Keong J.C.) July 23, 1986]

[Singapore – Suit No. 6602 of 1985]

Contract – Guarantee – Variation of terms – Whether defendant consented to variation.

Practice and Procedure – Conditional leave to defend – Whether ought to be given – Whether condition onerous.

By an agreement dated December 18, 1984, made between the respondent/plaintiff and one Tharoomals (HK) Ltd. ("Tharoomals") it was agreed that the plaintiff would open letters of credit in favour of one or more beneficiaries and at the risk and responsibility of Tharoomals in payment of a shipment of 2,200 pieces of video cassette recorders. Under the same agreement the defendant guaranteed the entire amount payable by Tharoomals under the agreement to the plaintiff. Pursuant to the agreement, the plaintiff opened letters of credit. As a result, Tharoomals became liable to pay to the plaintiff the amount of S$1,969,000 and interest thereon.

On July 9, 1985, the plaintiff commenced this action against the defendant as guarantor claiming the sum of S$2,172,026.19 being the aggregate of the sums alleged to be owing by Tharoomals under the agreement together with accrued interest up to date of issue of the writ. On August 1, 1985, the plaintiff took out a summons for summary judgment against the defendant. On January 8, 1986 the Assistant Registrar gave the defendant conditional leave to defend upon payment into court of the sum claimed or furnishing a bank guarantee within 30 days and costs of $700 in the event of default. The defendant appealed.

The issues before the court were whether on the facts the Assistant Registrar ought to have granted conditional leave to defend and whether the condition was onerous.

The defendant pleaded, *inter alia*, a material variation of the agreement without his consent which thereby discharged him from liability.

Held, dismissing the appeal: (1) although in law (a) there is a distinction between mere knowledge of the variation and consent to the variation and (b) the guarantor is under no duty to warn the creditor agreeing to a variation with the principal when he knows that the variation is going to occur, an implied consent may be inferred from the circumstances, *e.g.* where the guarantor himself arranges the variation or where he is involved in the preparation of documents necessary for its execution;

(2) where a guarantor is a director of the principal debtor company and he negotiates with the creditor in that capacity, he will seldom, if ever, be allowed to plead that he had not assented to the variation in his capacity as a guarantor but only in his capacity as a director of the principal debtor;

(3) the totality of the affidavit evidence of the plaintiff strongly suggests that the defendant was fully aware of what was going on between the plaintiff and Tharoomals and indeed had participated in all the relevant facets of the deal;

(4) taking into account all the circumstances of this case, the defence was shadowy and that there was something suspicious in the defendant's mode of presenting his case.

Cases referred to:

(1) *M.V. Yorke Motors* v. *Edwards* [1982] 1 W.L.R. 444.
(2) *Lloyds Bank Co.* v. *Ogle* (1876) 1 Ex. D. 262.
(3) *Wren* v. *Emmett Contractors Pty Ltd.* [1969] 43 A.L.J.R. 213.
(4) *Polak* v. *Everett* (1876) 1 Q.B.D. 669.
(5) *Woodcock* v. *Oxford & Worcester Railway Co.* (1853) 61 E.R. 551.
(6) *Winstone* v. *Bourne* [1978] 1 N.Z.L.R. 94.

CIVIL SUIT.

Gurbani Prem Kumar for the appellant.
Molly Lim (Miss) for the respondent.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an appeal from the decision of the Assistant Registrar giving the defendant, who is sued as guarantor, conditional leave to defend this action, the condition being that the defendant pay into court the full amount